IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Jerry Doty, Luis A. Viriato and Ronald R. Meadows

Confirmation No: 7831

Serial No.:   09/753,307   Examiner: Karen L. Le

Filed: December 29, 2000   Group Art Unit: 2614

For: METHOD FOR SWITCHING ACTIVE CALLS

Date: May 27, 2007

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

This review is requested for the reason(s) stated on the attached sheet(s). Note: no more than five (5) pages may be provided.

I am the:
- ☐ applicant/inventor
- ☐ assignee of record of the entire interest
  See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed)
- ☒ attorney or agent of record
- ☐ attorney or agent acting under 37 CFR 1.34

Total of 2 forms is submitted.

Customer No. 20575

Respectfully submitted,

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Julie L. Reed

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ARGUMENTS IN SUPPORT OF PRE-APPEAL BRIEF CONFERENCE

The Final Office Action does not comply with MPEP § 2144.03

MPEP § 2144.03(C) states that "[i]f applicant challenges a factual assertion as not

properly officially noticed or not properly based upon common knowledge, the examiner must

support the finding with adequate evidence." In the Office Action dated 7 September 2006, the

Examiner proposed that 'detecting that a first processor requires maintenance' is "well known

and popular" in the art (see page 7 of the Office Action). The Examiner also reiterated a

previous assertion that copying compression dictionary tables, loading compression tables, and

call information including a country code "has always been introduced" and is "old and well

know[n]" in the art (see page 6 of the Office Action).

In the Applicant's Response to the Office Action, filed 13 December 2006, the Applicant traversed the rejections and challenged the Examiner's 'common knowledge' assertions concerning the detection of maintenance (see page 7 of the Response). In the Applicant's Previous Response to the Office Action dated 27 March 2006, the Applicant traversed the rejections and challenged the Examiner's 'common knowledge' assertions concerning copying compression dictionary tables, loading compression tables, and call information including a country code (see page 7 of the Previous Response). Despite being challenged on the use of 'common knowledge' in the rejections, the Examiner has not provided any documentary support for the assertions. In the current Final Office Action dated 27 February 2007, the Examiner reiterates all of these 'common knowledge' assertions and again fails to provide any supporting evidence. Consequently, the current Final Office Action does not comply with MPEP § 2144.03.

The Examiner's 'common knowledge' rejections do not address the features of the claims

In the Final Office Action dated 27 February 2007, the Examiner asserts that all of the features of claims 1 and 9 are taught by Chong with the exception of 'determining that the time has been reached for a firmware upgrade' (see page 3 of the Final Office Action). The Examiner then proposes that it would be obvious to one of ordinary skill in the art to replace 'failure detection' in Chong's system with 'upgrade detection', as recited in the claims (see id). The Examiner bolsters this position by references to painting a bookshelf and servicing a bus or train (see id). Specifically, the Final Office Action states "when a bookshelf is to be painted, books should be moved to another bookshelf. When a bus or a train needs to be serviced, passengers would have to be moved to another bus or train" and then concludes that "in Chong, when active call server 140 fails (or to be upgraded/serviced), it would have been obvious to move/switch the active calls to server 141" (see id). However, even if the bus/train and bookshelf analogies were

considered to have any relevance to the common knowledge in the art of telephone network technology, the 'common knowledge' identified by the Examiner does not address the claimed features.

For example, to address the claim features of 'determining that the time has been reached for a firmware upgrade', the Examiner would have to assert that it is common knowledge to *determine* that the bookshelf needs to be painted and to *determine* that the bus/train needs to be serviced; not to identify that books or people have to be moved in order to perform these tasks. Consequently, even if the Examiner's position on 'common knowledge' were to be held valid, it still would not address the features recited in the claims.

In the Final Office Action, the Examiner also asserts that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to compress and decompress data while transmission to have larger volume of data" (see page 4 of the Final Office Action). However, claim 5 specifically recites "copying compression dictionary tables from the first entity; and loading compression tables in a second entity." Consequently, even if the Examiner's position concerning the obviousness of compressing and decompressing data were taken as valid, it still does not address the recited claim features.

The reference teaches away from the proposed combination

In the Final Office Action dated 27 February 2007, the Examiner asserts that 'determining that a processor has failed' in Chong is analogous to 'determining that a time has been reached for an upgrade of firmware on a first processor that is still actively handling calls', as recited in the claims (see page 3 of the Final Office Action). This position has been the pivotal argument by the Examiner through four Office Actions and an RCE, despite several narrowing amendments by the Applicant. However, Chong specifically teaches that its invention

addresses the problem in the prior art that "new technology is needed to reduce the effects of the failures [of call processors] between the updates" (see Chong col. 1, lines 29-32, emphasis added). Therefore, Chong specifically teaches that the failures it is referring to are not analogous to reaching a time for a firmware upgrade; they happen *between* upgrades. Consequently, Chong teaches away from a combination that would replace its 'failure determination' with a 'determination that a time has been reached for a firmware upgrade.'

Numerous other claim features are not taught in the reference

Claims 1 and 9 refer to initializing a second processor while a current call is being processed on a first processor. The only time a switch is made from the call server to the backup call server in Chong is when the call server has failed. See, for example, Chong, col. 3, lines 11-14 stating "[a]s shown in Fig. 3, the database 103 may include the standby call server 141. In one embodiment, the standby call server 141 is used to backup the active call server 140 *in the event of a failure of the active call server* 140 [emphasis added]." Therefore, as the first processor has failed, it cannot be processing the current call when the second server is being initialized.

Claim 1 further refers to 'releasing the first processor from further processing of the call.' This is not taught in Chong for the same reason as the initialization feature discussed above; the first processor has failed. The disclosure of Chong makes no mention of releasing the processor. As the processor has already failed, it is by default released from further processing and no explicit release message is needed nor taught in Chong.

Claims 1 and 9 further refer to 'repeating the switching of calls from the first processor until the first processor is free for maintenance.' There are no other calls taught, suggested or mentioned in Chong, so Chong cannot teach repeating the transfer of calls. If there were any

other calls on the first processor of Chong, they are already gone before switching even begins, because the first processor has already failed.

With regard to claims 12 and 13, the Examiner has interpreted the database 103 in Chong, which includes an active call *server* 140, a standby call *server* 141, a high speed interface (such as a LAN, see Chong, col. 3, lines 4-5), two interface servers 120 and two administrative servers 150 and 151 as being contained in one device in order to reject the features of these claims. As no definition of server is given in Chong, the plain meaning of the term 'server' would generally indicate that the database 103 is a logical grouping of several devices, not one network device. This is supported by the description of Figure 3 in the Brief Description of the Drawings as 'a distributed database architecture.' A distributed database architecture involves distributing various pieces of a database among several devices. Therefore, database 103 is not a single network device and thus is not analogous to the features in these claims.

The Applicant also asserts all arguments made previously, whether or not explicitly discussed herein, to preserve the right to assert these arguments in the Appeal Brief.

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